

ADVERTISING COMPLIANCE: IT'S NOT CHILD'S PLAY

The risk of children being exposed to online gambling has been the subject of intense press scrutiny recently, prompting fresh warnings from the ASA and CAP that operators must be 'very cautious' to avoid advertising that appeals to under-18s. Harris Hagan's **Yue-Ting Fung** covers the latest developments

Public concern about the safety and fairness of gambling has driven social responsibility measures to prevent gambling-related harm and caused increased regulatory scrutiny. In the Gambling Commission Annual Report and Accounts 2016/17, the regulator stated that in its survey of 4,000 people, protecting children from gambling had emerged as the most important policy issue.

Media reports prompt new action

In a recent article entitled "Cartoons lure kids to online gambling" on 8 October, 2017, The Sunday Times highlighted concerns about online gambling advertising appealing to young children. This high profile, damaging article attracted an immediate and strong response from the relevant gambling and advertising authorities. In a letter to The Sunday Times following the article, Gambling Commission executive director Tim Miller confirmed that "protecting children from being harmed or exploited by gambling is a clear priority [for

the Commission]".

On 20 October, 2017, a joint letter from the Commission, the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Remote Gambling Association (RGA) advised UK-licensed operators to amend or remove immediately any advertisements on their websites or third party media that were likely to have particular appeal to under-18s and were freely accessible. While the letter did not set out any new requirements, it reinforced the importance of existing rules and advertising in a socially responsible manner in respect of children.

As a result, online operators have had to review all graphics and images on their websites, especially those viewable by children without age verification, such as those on online homepages. The scope of content for online operators to consider is wide and should also include consideration of thumbnails, logos, screenshots and names and descriptions of games.

In addition, online operators have also had to consider advertising content distributed via third party media, including search engine advertising and third party platforms such as the Apple Store. The CAP Code applies in the same way to content viewed on an online operator's homepage and therefore, any screenshot or game logo that might be of particular appeal to children and viewed on the face of a page or screen without registration or an appropriate level of age verification, should also be considered carefully. From the ASA's point of view, a check box ticked by participants to confirm over-18 status is unlikely to be sufficient.

Acceptable content

There is no absolute definition of what particularly appeals to children, but those reviewing content are expected to use the test established in the ASA's 2015 ruling (Geo24 UK Limited), to consider whether the content will be more likely to appeal to under-18s or over-18s. Advertisements more likely to appeal to under-18s should be removed or placed behind an appropriate age verification barrier to prevent them being freely accessible.

The use of cartoon imagery and comic book characters has proved particularly problematic owing to their potential appeal to both children and adults, prompting regulators to acknowledge that the matter is 'nuanced'. Certainly, the overturning of the ASA's controversial "Iron Man" ruling against Ladbrokes in May 2017 is a case in point. The initial August 2016 ruling held Ladbrokes in breach for its online slots promotion being "of particular appeal to children or young persons" (CAP Code 16.3.12) despite the email promotion being sent to age-verified

ASA/CAP — gambling advertising key points

- ASA/CAP considers it best practice to place any potentially appealing content behind an age verification wall and not on the home page.
- It is the operator's responsibility to ensure that advertisements do not appeal to children or young people.
- In respect of a breach in affiliate advertising, the ASA will hold the operator and affiliate jointly responsible.
- Any adverts reviewed will be considered on a case-by-case basis.
- The onus is on operators to ensure they have sufficient evidence to ensure their advertisements do not breach rules.

customers and research indicating that under-18s comprised only 6.39% of Marvel Comics' fan base. After an independent review requested by Ladbrokes, the ASA finally resolved that as the "Iron Man" email promotion had only been sent to age-verified customers, it was sufficiently targeted and the placement of the advertisement was therefore not irresponsible.

Nevertheless, the ASA and CAP upheld their guidance published on 9 October, 2017, confirming that online operators should carefully consider the combination of names and graphics used, for instance regarding fairy tale references such as "Jack and the Beanstalk", or images and themes prevalent in children's popular culture, as evidenced in the ASA's 2015 ruling in relation to pirate references.

However, there are no prescriptive rules and the ASA and CAP has encouraged online operators to focus on the execution

ASA and CAP Guidance – betting and gaming: appeal to children (9 October, 2017)

- cartoons or cartoon-like imagery has the potential to appeal to under-18s, and should therefore be used carefully in advertisements for gambling products;
- popular comic book characters are likely to have particular appeal to children and young people and therefore be in breach of the advertising codes, irrespective of whether it is unlikely to be viewed by many children;
- colourful, exaggerated cartoon-like imagery is also likely to have particular appeal and should be not be used with names likely to appeal to under-18s;
- some 'cartoon'-style graphics might be acceptable if they are adult in execution but marketers risk appealing to under-18s if graphics are too similar in appearance to cartoons popular with children.

of their gambling marketing, as opposed to individual elements in isolation. They also reassured that any reviews would be conducted on a case-by-case basis. In the event of a review, the onus is on operators to ensure that they have sufficient evidence to show that the content does not hold particular appeal for children or breach the CAP Code generally.

Sanctions where appropriate

As noted in Miller's response letter to The Sunday Times, the Commission's strong prosecution of two individuals in March 2017 for providing illegal gambling which was accessible to children reinforces the Commission's hard line. Both individuals faced substantial fines totalling £265,000.

Operators are not expected to anticipate children's exposure to inappropriate content through parental negligence, for instance where parents have remained logged into their own accounts. However, operators are expected to ensure that all content especially regarding play-for-free and play-for-money games, whether accessed by computer or otherwise, is appropriately age-gated.

The new Gambling Industry Code for Socially Responsible Advertising (Third edition) reinforces that:

- "care must be taken not to exploit children and other vulnerable persons in relation to gambling activity; and
- advertisements should not be specifically and intentionally targeted towards people under the age of 18 through the selection of media, style of presentation, content or context in which they appear. All advertisers and gambling operators should already be aware that it is an offence under Section 46 of the Gambling Act 2005 to invite a child or young person to gamble."

In relation to the latter, this includes:

- intentionally sending documents advertising gambling to a child or young person; and
- intentionally bringing a child or young person's attention to gambling information with a view to encouraging them to gamble.

Existing rules could benefit from further clarification to tighten the regulation of online gambling and its promotion. From an industry perspective, all online operators are already required to advertise in a socially responsible manner and comply with the CAP Code (ordinary code provision 5.1.6). However, the requirement that facilities for gambling should not be provided "in such a way as to appeal particularly to children or young people, for example, by reflecting or being associated with youth culture" currently only applies to land-based casinos (social responsibility code provision 3.2). The extension of this requirement to online operators would help demonstrate the industry's commitment to providing more comprehensive protection to children from online gambling and soothe existing public concerns. RGA chief executive Clive Hawkswood has already voiced his support for any proposed clarification to the Licence Conditions and Codes of Practice to ensure that online games are not of particular appeal to children.

Caution required

Given the sensitive social and political implications, the protection of children from online gambling will undoubtedly remain a central issue for the industry. Online operators will obviously have to continue proceeding with great caution in respect of their marketing content, in particular regarding the use of cartoon-like imagery and other themes that are especially familiar to children or young people. Meanwhile, research being conducted by the Responsible Gambling Strategy Board and others will continue to examine the wider relationship between children and gambling to establish where further action may be necessary.



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